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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/913,346	12/11/2001	Jean-Paul Michaut	P21328	8305
7055	7590	11/28/2003		
GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191			EXAMINER ADDIE, RAYMOND W	
			ART UNIT	PAPER NUMBER
			3671	

DATE MAILED: 11/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/913,346

Applicant(s)

MICHAUT, JEAN-PAUL

Examiner

Raymond W. Addie

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-16, 18 and 24-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-16, 18 and 24-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: *English translation of NPL.*

DETAILED ACTION

Claim Objections

1. Claim 32 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 32 depends from Claim 31, and contains the exact same claim language as Claim 31.

Election/Restrictions

2. Newly submitted claims 30, 33-36 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claim 30 requires the modified bituminous binder be provided in a proportion of "at least 4% by weight". As previously filed, the modified bituminous binder had only been provided in a proportion of 3%, without respect to weight, volume or mass. Hence, the specific recitation requiring a specific proportion "4% by weight" is distinct from the broader range of "3%", because it constitutes a more narrow range than what was previously claimed.

In regards to Claims 33-36 the recitation requiring "a monogranular aggregate layer" is significantly distinct and independent from the originally presented particle distribution size ranges, the difference in particle size distribution provides different structural and porosity features from that which was previously claimed.

If the claims had been originally presented, they would have been subject to a species requirement, since the embodiments are disclosed but not illustrated.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 30, 33-36 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102 or 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10-15, 25, 28 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the

alternative, under 35 U.S.C. 103(a) as obvious over Non-Patent literature to VAN

BOCHOVE G G; "NIEUW CONCEPT VOOR ZEER OPEN ASFALTBETON" WEGEN,

vol. 64, no. 6, 1 June 1990 (199990-06-01), pages 30-31.

Van Bochove, as cited in an International Search report issued May 12, 2000, discloses;

A bituminous draining roadway comprising:

An upper partial layer and a lower partial layer.

Each layer having an aggregate particle size, such that the lower layer comprises aggregates of larger diameter and size than that of the upper layer. See Fig. 1.

A modified bituminous binder, such as a rubberized asphalt.

A filler material, such as sand disposed within the bituminous binder or the upper layer, which can be alternatively omitted in the case of single-grained aggregate layers.

See Page 7-8 of the translated document.

Although Van Bochove does not disclose the constituent portion of filler materials used in the upper layer, it would have been obvious, if not inherent that when it is desired to utilize a filler material, either in the binder or the aggregate mixture, as taught by Van Bochove, the filler would be used in quantities greater than 2% by weight in order to provide the solid mass needed for the structural strength intended for the service life of the asphaltic roadway.

In regards to Claims 11-15, 25, 28 Van Bochove discloses noise coefficient and the drainage coefficient of the asphaltic roadway are proportional and dependent on the actual particle size of the layers, such that, the 2nd particle sizes can be in the range of broken stone, gravel and/or crushed rock, which can be as large as (11/16 or 16/22 mm) and the 1st particle size can range from 4/8 mm, in the case of small stones, and that each layer may alternatively further comprise sand; and may have a gradient size

range or be of a single-grained mixture, which inherently requires 95% of the aggregate to be within a specific grain mixture, such as 4/8 mm. Therefore, although Van Bochove does not explicitly disclose a specific ratio of 1st and 2nd particle sizes, as claimed, it would have been obvious, if not inherent to one of ordinary skill in the art, that Van Bochove clearly contemplates a variety of embodiments having different particle sizes based on noise and water drainage characteristics, as clearly disclosed in pages 7-8 of the translated document.

4. Claims 18, 24, 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over NPL to Van Bochove in view of Hendriks et al. # 5,910,212.

Van Bochove in view of Hendriks et al. do not disclose the void ratio of the disclosed Very Open Asphalt "voac". However, Hendriks et al. discloses an open graded asphalt composition having a void content ranging between 20-30% that open graded asphalt can be applied to a roadway at a temperature less than 140 degrees Celsius.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the water permeable roadway of Van Bochove, with a void content in the range of 20-30% in order to maximize the water draining characteristics of the roadway.

5. Claims 26, 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over NPL to Van Bochove in view of Kim et al. # 5432213.

Although Van Bochove does not disclose the preferred thickness for each of the layers of the roadway being formed, Van Bochove does disclose the theoretical maximum thickness is not necessary. Further, Kim et al. teaches water-permeable asphalts "voac" can be formed in preformed blocks of multiple layers, or in continuous, multiple, stacked layers, wherein the top(wear) coarse can be between .05-3 cm; and a lower (base) coarse can be between .55-5.5 cm; in order to balance the competing needs of strength and porosity. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to make the roadway of Van Bochove, in layers greater than ½ mm and less than 4cm thick, in order to provide sufficient strength, in very open concrete mixtures. See Kim et al., Col.4, Ins. 19-35; Fig. 1.

6. Claims 31, 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over NPL to Van Bochove in view of Bredael # 5,588,703.

Van Bochove discloses a water permeable asphalt mixture, used to form multi-layer roadways, utilizing a modified, bituminous binder. But does not disclose the specific use of SBS.

However, Bredael teaches the use of SBS in roadways, improves cohesiveness between aggregate particles and increases resistance to permanent deformation (rutting of the roadway), and that SBS can be provided from new sources or recycled sources. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to make the roadway of Van Bochove, with an SBS modified binder, in order to increase the service life of the roadway being formed. See Cols. 1-2, ln. 14.

Response to Arguments

7. Applicant's arguments, see Paper 14, filed 10/7/200, with respect to the rejection(s) of claim(s) 10-29 under 35 U.S.C. 102 and 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Non-patent Literature to Van Bochove entitled "New concept for Very Open Asphalt Concrete; which was cited by the Applicant in an IDS that was filed 11/06/2001 and provided an English translation by the Examiner.

Response to Amendment

8. Applicant's amendment to Claims 10, 25, 28; all of which broadened the scope of the Independent claims, necessitated a new search of the prior art, as well as a written English translation of the cited prior art, in order to further search the specific disclosure of the cited prior art.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Art Unit: 3671

Applicant amendments to the claims, has necessitated a new grounds of rejection, as cited above, based on the translation of the cited prior art, into English.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond Addie whose telephone number is (703) 305-0135. The examiner can normally be reached on Monday-Friday from 7:00 am to 2:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (703) 308-3870. The fax phone number for this Group is (703) 872-9326.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113.



Thomas B. Will
Supervisory Patent Examiner
Group 3600

RWA
11/24/2003